Pete Wilson, Governor

CEQA, NEPA, and Base Closure:

Recipes for Streamlining Environmental Review

CEQA Technical Advice Series

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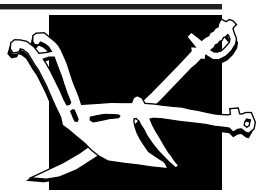
The **CEQA Technical Advice Series** is intended to offer CEQA practitioners, particularly at the local level, concise information about some aspect of the California Environmental Quality Act. This series of occasional papers is part of OPR's public education and training program for planners, developers, and others.

Introduction

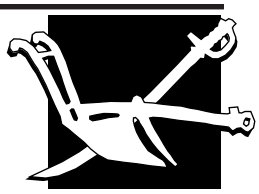


The purpose of this advisory is to illustrate how local agencies may proceed through the process of evaluating a base reuse plan pursuant to the California Environmental Quality Act (CEQA) while utilizing the environmental analysis prepared by a Federal agency under the National Environmental Policy Act (NEPA). Both CEQA and the *CEQA Guidelines* contain several specific provisions which can streamline CEQA compliance where an environmental review document is also being prepared or has already been prepared under NEPA. *CEQA, NEPA, and Base Closure* offers substantive suggestions for employing those provisions to avoid repetitive work.

This paper briefly reviews the base closure and reuse process, compares CEQA and NEPA procedures, discusses the provisions in CEQA, NEPA, and the *CEQA Guidelines* for preparing joint EIS/EIR documents, and concludes with some suggestions for complying with CEQA where a joint document has not been prepared. All code citations refer to the California Public Resources Code unless otherwise noted.

Pertinent excerpts from the *CEQA Statutes and Guidelines* and the NEPA Guidelines may be found in Appendix 1. A sample Memorandum of Understanding for preparing a joint EIS/EIR is in Appendix 2.

1 The Base Closure and Reuse Planning Process



A brief overview of the planning process which underlies military base closure and reuse activities will put the process of assessing the potential environmental impacts of reuse into context. This section outlines the respective roles of federal and local agencies in the process. Figure 1 outlines this process.

Federal Role

Disposal of a military base is guided by the Federal Property and Administrative Services Act of 1949, the 1990 Base Closure and Realignment Act, and other laws. The product of the federal process will be a disposal plan which, having taken into account the local base reuse plan when available, will guide the disposal of base property.

When the federal government has made a final decision to close a military base, the involved services within the Department of Defense (DoD) will "screen" the base property to determine whether any DoD agency has a housing or facility need that can be met by a portion or all of that base. The secretary of the service may authorize the transfer of such property to the agency, but is not required to do so. Base property not transferred to a DoD agency is determined to be "excess" to the needs of DoD.

For this excess property, DoD undertakes a similar screening for other federal agencies' property needs. New policies enacted by the 1994 Defense Authorization Act limit this process of screening other federal agencies to six months after the date the base closure was approved. Excess property not allocated during this screening is considered "surplus" with respect to federal government needs.

In turn, surplus properties are screened for State and local agency uses, including use by the homeless under the McKinney Homeless Assistance Act. State and local entities may pursue two paths towards obtaining these surplus lands or facilities: public benefit conveyance and negotiated sale. In addition, under the new procedures enacted in 1994, the local base redevelopment agency may seek an "economic benefit conveyance."

A public benefit conveyance allows public and private nonprofit agencies to acquire property at below market value for specified uses. Typical public benefit conveyances are for such uses as public airports, prisons, recreation facilities, and public education. A public benefit conveyance must be sponsored by a federal agency (for example, a community wanting conveyance of a site for a jail facility would need the sponsorship of the U.S. Department of Justice) and will carry certain restrictions on the use of the property.

Negotiated sale, on the other hand, allows the federal government to receive fair market value for its surplus property. Eligible public agencies may request negotiated sale without the imposition of use restrictions.

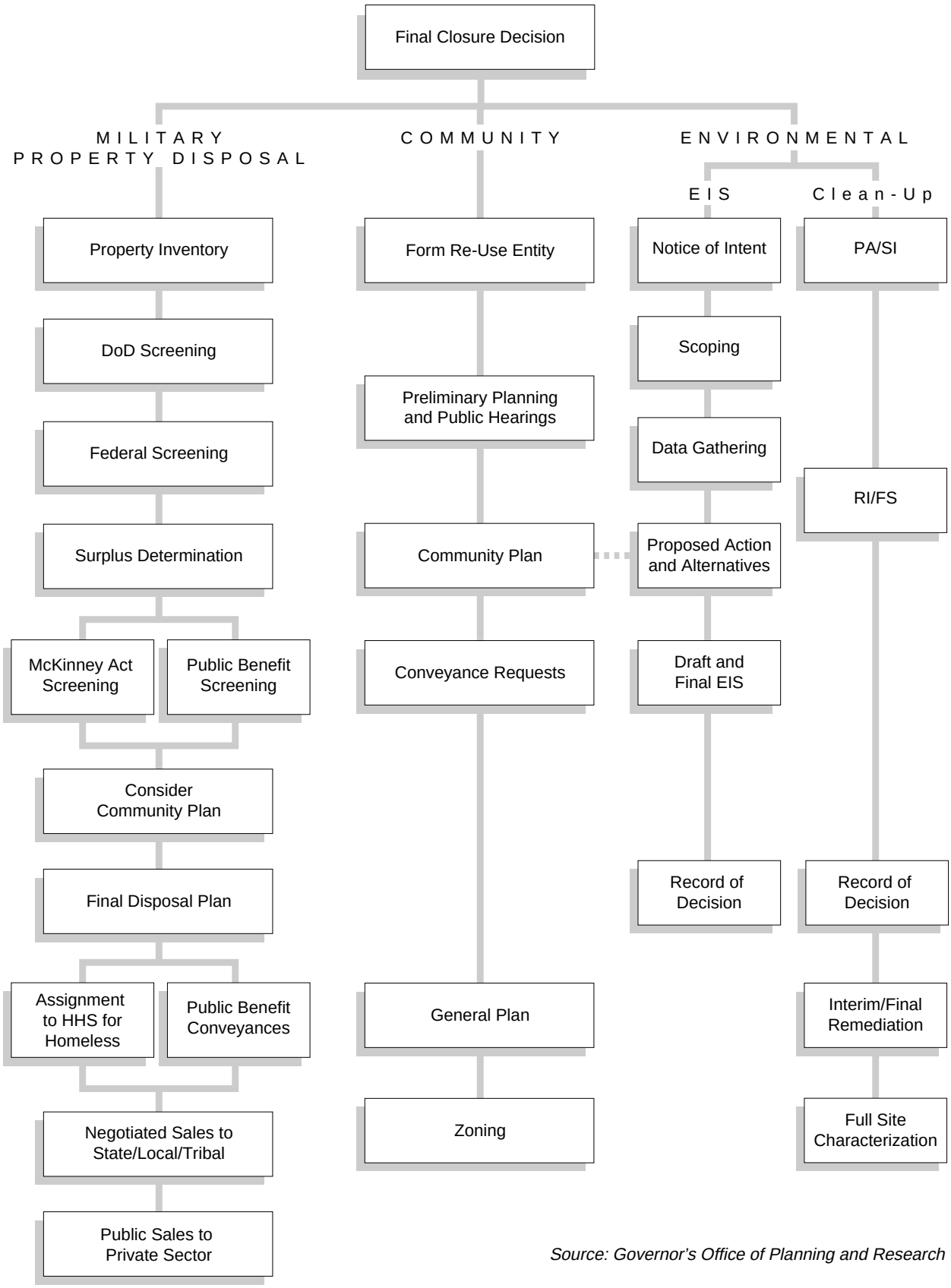
Surplus properties not claimed by State or local governments are offered for competitive sale to the public at fair market prices. Property disposed of in this manner carries no federal use restrictions and is bound by local zoning and land use regulations.

When the general disposition of the base becomes known, DoD will prepare a plan for the disposal of surplus portions of the base. An EIS, as well as hazardous waste remediation studies, will be completed before the disposal plan is final. The planners will also consider the reuse plan prepared by the local community (where no local reuse plan exists, the DoD will prepare its own representative plan). Actual conveyances and sales of surplus properties will occur after adoption of a federal "Record of Decision" (ROD) for the final disposal plan.

The ROD must describe the decision, identify the factors involved in reaching that decision, identify the alternatives considered, and specify which alternative was considered to be environmentally preferable (40 CFR 1505.2). The agency must also state whether all practical mitigation measures have been adopted to avoid or minimize the environmental effects of the chosen alternative, and if not, why not. A monitoring and enforcement program must be adopted where applicable.

Figure 1

Typical Military Base Disposal and Reuse Process



Source: Governor's Office of Planning and Research

Local Role

Affected local jurisdictions are expected to begin work on a base reuse plan concurrent with the federal activity. The California Military Base Reuse Task Force has recommended that "impacted communities establish a reuse planning entity immediately after a base closure decision becomes final, and that such entity be broadly representative of all key interests in the community, either through direct representation or inclusion in subcommittees." Where more than one community is impacted by the base closure, which is usually the case, inclusion of all impacted communities in this entity is imperative. A cooperative approach, within a formal framework, is key to smooth preparation of a reuse plan. Local reuse entities may also include ex officio State representation when advantageous.

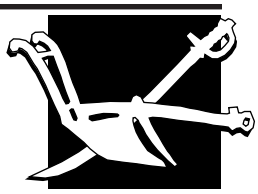
The initial reuse planning organization is often started by local political leadership such as one or more mayors, a State legislator, or a Congressman. If a planning group does not immediately coalesce, the DoD's Office of Economic Adjustment (OEA) will attempt to bring together a representative reuse entity. The OEA can provide grant funds for reuse planning when it is satisfied that a representative group has been formed.

A local reuse organization may be established in any of several ways. The specific powers of the organization, its membership, and its governance procedures will vary depending on the circumstances of the particular base closure and the agencies involved. When a single jurisdiction is involved, the organization may consist of a steering committee appointed by the legislative body to act as a focal point for ideas and to make recommendations. Where several jurisdictions are involved, a Memorandum of Agreement (MOA) between them may be sufficient to establish their relative expectations and responsibilities. A joint powers authority (JPA) comprised of the affected jurisdictions is another alternative. The Joint Exercise of Powers Act (Government Code Section 6500, et seq.) allows member agencies to establish a JPA which meets their particular needs and wields specified powers. Additional local options are discussed in detail in the January 1994 final report of the California Military Base Reuse Task Force, available from OPR.

There are numerous good reasons for affected jurisdictions to join together to cooperatively prepare a base reuse plan. For example, the chances of receiving a reuse planning grant from the DoD's Office of Economic Adjustment are improved. Also, communication between the federal government and affected local jurisdictions is easier when there is a single point of local contact. In addition, the reuse entity can become a forum for discussing pertinent issues and resolving differences. This reduces the chance that disgruntled local jurisdictions will litigate to protect their interests. Furthermore, of interest to this discussion, a single base reuse planning entity simplifies the process of preparing the Environmental Impact Statement and Environmental Impact Report for the reuse plan.

Regardless of the form it takes, the goal of the reuse planning process should be an overall vision of and development policies for future uses of the closed facility, based on a realistic assessment of available resources and land use regulations.

2 NEPA and CEQA: Comparisons and Contrasts



NEPA and CEQA are similar laws with a common purpose: examining and weighing the potential environmental consequences of proposed government actions before such actions are undertaken.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) requires federal agencies to assess the possible environmental consequences of projects which they propose to undertake, fund, or approve. Under NEPA, closure of a military base usually requires preparation of an Environmental Impact Statement (EIS).

The process of preparing an EIS is as follows:

- A "Notice of Intent" (NOI) to prepare an EIS is published in the Federal Register. The NOI includes a description of the project and alternatives, the lead agency's proposed "scoping" process and any related meetings, and a contact person within the agency.
- "Scoping" of the project occurs, whereby other agencies are given the opportunity to bring to the attention of the lead agency significant issues which should be included in the EIS. This enables the lead agency to focus the EIS on a particular range of actions, alternatives, and impacts.
- A Draft EIS is prepared by the agency.
- Upon completion of the draft, a public "Notice of Availability" (NOA) of the Draft EIS is filed with the Environmental Protection Agency's (EPA's) Washington D.C. and regional offices for publication in the Federal Register.
- The Draft EIS is made available for public review.
- A Final EIS is prepared, including responses to the comments received during the review period.
- The Final EIS is circulated for public review; a second NOA, this time for the Final EIS, is sent to the EPA.
- The Final EIS is adopted and the agency renders its decision on the project.
- The "Record of Decision" (ROD) is prepared.

The ROD includes a comparative discussion of the project alternatives, a discussion of the factors considered in making the decision, a description of those mitigation measures which were adopted and an explanation of why mitigation measures were not adopted, as well as a monitoring and enforcement program for adopted mitigation measures.

A Draft EIS contains the following basic components:

- A cover sheet enumerating the preparing agency, the project and its location, the agency contact person, a very brief abstract of the EIS, and final comment date.
- A summary of the EIS, including conclusions, areas of controversy, issues raised, and issues to be resolved.
- Table of Contents
- Statement of the purpose and the need fulfilled by the project and its alternatives.
- A range of alternatives, including the proposed action, comparatively analyzed and including mitigation measures for adverse environmental impacts (the agency need not adopt these measures unless so required by its own NEPA procedures).
- A list of the Federal permits required by the action
- A description of the affected environment.
- A description of the environmental consequences of the various alternatives, including direct, indirect, and cumulative effects.
- A list of preparers.
- A list of agencies and organizations consulted.
- Appendices.
- Index.

A Final EIS will include all of the above as well as incorporate or otherwise respond to the substantive comments received on the draft EIS from the public and other agencies.

The 1994 Defense Authorization Act requires DoD to complete its EIS within 12 months after

receiving a community's reuse plan. The reuse plan will comprise the preferred alternative and a single NEPA document will be prepared for both disposal and reuse. However, if no community reuse plan is available before the draft EIS is prepared, the advance scoping and related information will become the basis for completion of the EIS. In this situation, the involved DoD service will devise the preferred reuse plan alternative as well as the other alternatives to be evaluated.

California Environmental Quality Act

The California Environmental Quality Act (CEQA) requires State and local public agencies to consider the environmental consequences of projects which they undertake, fund, or permit. Under CEQA, an Environmental Impact Report (EIR) must be prepared for the adoption of an initial base reuse plan by the local agency (Section 21151.1(a)(4)). An EIR may be required for later revisions to the plan and associated general plan amendments, specific plans, or redevelopment plans, depending upon whether those actions would result in environmental impacts not previously analyzed in the initial EIR. Even if the base reuse plan is not prepared to serve as a state-required plan, it may nevertheless benefit the reuse entity to subject it to an EIR to establish it as the basis for environmental review of future projects.

After an initial study and preliminary consultation or scoping have been completed and the decision is made to prepare an EIR, the process is as follows:

- A "Notice of Preparation" (NOP) is sent to interested agencies to solicit their comments on the project. The NOP includes a project description, location of the project, possible environmental impacts, and the date and time of known future meetings on the project. Where a State agency will be a responsible agency, a copy of the NOP is also sent to the State Clearinghouse. Agencies have 30 days to tender their comments.
- A Draft EIR is prepared.
- A "Notice of Completion" (NOC) and copies of the Draft EIR are submitted to the State Clearinghouse for distribution to interested State agencies. Public notice is provided by the lead agency and a copy of the NOC is posted in the office of the County Clerk of the county where the project is located. The Draft EIR is available for review and comment by the public and local agencies during this time.
- A Final EIR is completed, including responses to the comments received during the review period.
- The Final EIR is certified and the project approved.
- The Lead Agency makes findings regarding mitigation of the significant environmental impacts of the project *(Guidelines* Section 15091). It describes in writing the overriding considerations which justify project approval in the face of unavoidable impacts *(Guidelines* Section 15093). It also adopts a mitigation monitoring or reporting program upon approval of the project.
- A "Notice of Determination" (NOD) describing the project, its impacts and adopted mitigation, the environmental findings of the agency, and the location of copies for examination is filed with the county clerk. This starts a 30-day statute of limitations for court challenges to the EIR.

The *CEQA Guidelines* provide that the lead agency may determine the particular format of the EIR it prepares *(Guidelines* Section 15120). Within this flexible approach, the required contents of a Draft EIR are as follows:

- Table of contents or index
- Summary of proposed actions and expected consequences of those actions.
- Project description.
- Environmental setting of the project.
- Environmental impacts, including significant effects of the proposed action (direct and indirect); significant effects which cannot be avoided; mitigation measures proposed to minimize significant effects; feasible alternatives which would avoid or lessen the project's impacts; relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; significant irreversible environmental changes; and growth-inducing impacts.
- Effects not found to be significant.
- Cumulative impacts of the project in the context of past, present, and reasonably anticipated projects.
- A list of organizations and persons consulted.

The Final EIR will include comments received on the draft and the lead agency's responses to those comments. It must also include a list of the organiza-

tions and individuals which commented on the draft.

Upon approving a project for which an EIR has been prepared, the lead agency must make findings relative to each of the mitigation measures pursuant to *Guidelines* Section 15091. These findings state whether the agency is imposing the mitigation measure, the measure is the responsibility of another agency which can and will impose it, or there are economic, social or other reasons why the mitigation measures and project alternatives are infeasible. Further, if the EIR has identified any significant environmental impacts which cannot be mitigated or avoided, the agency must make a "statement of overriding considerations" which describes the specific benefits of the project which outweigh its unavoidable environmental effects *(Guidelines* Section 15093).

Figure 2 (next page) compares the major features of EIS and EIRs, respectively.

Commonalities and Contrasts

As can be seen from the above discussion, there are many similarities between NEPA and CEQA processes, and between an EIS and an EIR. For instance, the federal NOI is analogous to the State NOP; the federal Notice of Availability performs the same function as the State Notice of Completion; both processes offer the opportunity for other agencies and the public to comment on the environmental document; and the required contents of an EIS are largely the same as those required of an EIR.

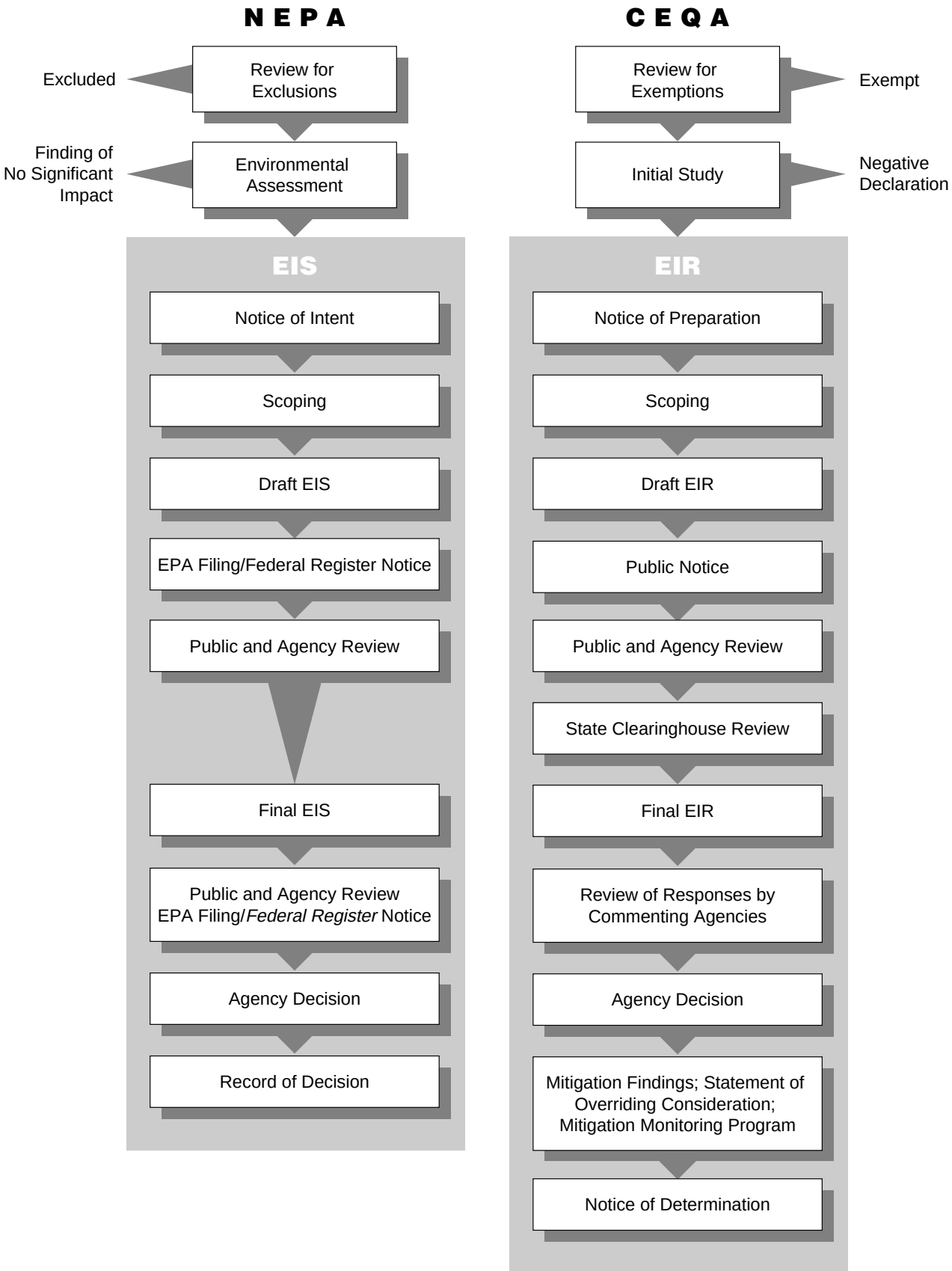
Nonetheless, there are also differences. For instance, EIS scoping and notice requirements are, understandably, oriented toward federal agencies and include State and local agencies and groups as necessary. CEQA requires public notice to be published in a local newspaper or otherwise provided locally. Under NEPA, the project and a range of alternatives to the project are examined at the same level of detail (i.e., the proposal is seen as one of several alternatives). CEQA does not require alternatives to be examined in as great a detail as the project (i.e., alternatives are means of avoiding the impacts associated with the project). NEPA requires, as part of the discussion of each alternative, discussion of mitigation measures and growth inducing impacts. CEQA requires a separate discussion of these issues, focusing on the project. NEPA does not require the agency to adopt the mitigation measures identified in an EIS. CEQA mandates adoption unless a measure is found to be infeasible for specific reasons.

Figure 3 (page 11) summarizes these differences.

Despite their minor differences, both NEPA and CEQA are flexible enough that a single environmental document can be prepared which will comply with both. For local agencies, the primary consideration is ensuring that the EIS meets the basic requirements of CEQA. Later, when the local agency uses the EIS as an EIR, it will be responsible for making the findings and statement of overriding considerations required under *Guidelines* Sections 15091 and 15093, respectively.

Figure 2

NEPA and CEQA: Parallel Processes



Based on *Successful CEQA Compliance: A Step-by-Step Approach*, 1993 Ed., by Ronald E. Bass and Albert I. Herson, Solano Press

Figure 3

Comparison of EIS and EIR

Draft EIS contains:

- A cover sheet enumerating the preparing agency, the project and its location, the agency contact person, a very brief abstract of the EIS, and final comment date. (40 CFR 1502.11)
- Table of contents and index. (40 CFR 1502.10)
- A summary of the EIS, including conclusions, areas of controversy, issues raised (i.e., significant effects), and issues to be resolved (i.e., mitigation and alternatives). (40 CFR 1502.12)
- Description of the purpose and need fulfilled by the project and its alternatives. (40 CFR 1502.13)
- A description of the affected environment. (40 CFR 1502.15)
- Discussion of a range of alternatives, including the proposed action and the no project alternative, comparatively analyzed and including mitigation measures. (40 CFR 1502.14)
- A list of the Federal permits required by the action. (40 CFR 1502.25)
- A description of the environmental consequences of the various alternatives, including: Direct, indirect, and cumulative environmental effects (40 CFR 1508.25); Growth-inducing effects (40 CFR 1508.8); Unavoidable significant effects; Proposed mitigation measures; Relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and Significant irreversible environmental changes. (40 CFR 1502.16)
- A list of preparers. (40 CFR 1502.17)
- A list of agencies and organizations consulted. (40 CFR 1502.10)
- Appendices. (40 CFR 1502.18)

Final EIS contains in addition:

- Comments received on the draft (40 CFR 1503.4); and
- Responses to comments, including revisions to the draft. (40 CFR 1503.4)

Draft EIR contains:

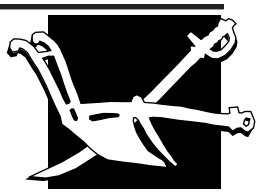
- Table of contents or index. (Guidelines Section 15122)
- Summary of the EIR, including summaries of proposed actions, significant effects, mitigation, and alternatives. (*Guidelines* Section 15123)
- Project description, including location, physical characteristics, objectives, and permits required from other agencies. (Guidelines Section 15124)
- Environmental setting of the project. (*Guidelines* Section 15125)
- An analysis of the environmental consequences of the project, including: Direct and indirect significant environmental effects of the proposal; Cumulative effects (Guidelines Section 15130); Unavoidable significant effects; Proposed mitigation measures ; Feasible alternatives; Relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; Significant irreversible environmental changes; and Growth-inducing impacts. (Guidelines Section 15126)
- Effects not found to be significant. (*Guidelines* Section 15128)
- A list of organizations and persons consulted. (*Guidelines* Section 15129)
- Appendices. (*Guidelines* Section 15147)

Final EIR contains in addition:

- Comments received on the draft;
- A list of commenters; and
- Responses to comments, including revisions to the draft.

(*Guidelines* Section 15132)

3 Preparing a Combined EIS/EIR



CEQA and the *CEQA Guidelines* strongly encourage State and local agencies to prepare a combined EIS/EIR (i.e., one document which satisfies both NEPA and CEQA) for projects where time is of the essence (Section 21083.6, *Guidelines* Section 15222). The NEPA regulations similarly encourage federal agencies to cooperate with local agencies "to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements," including the preparation of a joint document (40 CFR 1506.2). A joint document cannot be prepared solely by a State or local agency, it must include direct federal agency involvement (40 CFR 1506.2).

Preparing a combined EIS/EIR requires the close coordination and cooperation of the involved federal, State, and local agencies. This should include early agreement on the thresholds or other means of determining the significance of potential environmental effects and, where possible, upon the significant effects themselves. In many cases, the agencies preparing the joint EIS/EIR will enter into a Memorandum of Understanding (MOU) which formally establishes their roles and responsibilities in the process. Appendix II contains a model MOU for federal, State, and local agencies preparing a joint EIS/EIR. *CEQA Guidelines* section 15110 enables the State or local agency to waive the one-year time limit otherwise applicable to completion of an EIR. This lengthened period may be reflected in the MOU.

Those places where a single local entity is responsible for base reuse planning have a distinct advantage in the process. Coordination is simpler: the DoD service has fewer local agencies to deal with; a single base reuse plan, rather than competing individual plans, is agreed upon by the involved local agencies; and the plan being examined in the EIS/EIR is relatively stable.

The process of preparing an EIS/EIR proceeds most efficiently when the plan for reuse is well-defined from the beginning and not subject to change during environmental review. Obviously, this reuse plan cannot describe in detail all anticipated projects, particularly if it is prepared early in the closure and reuse process. What it should do is establish the general land use objectives and policies which will be the foundation for later, more detailed, project-specific activities.

The more specific the reuse plan, the easier it may be to use its EIS/EIR as the basis for environmental review of later projects which occur pursuant to that plan. The ability of an EIS/EIR to address later projects with a minimum of additional environmental review hinges on meeting the procedural, as well as substantive requirements of CEQA. The local agency should take it upon itself to ensure that the EIS, in process and content, will meet CEQA requirements. For example, CEQA's stricter notice requirements must be complied with in addition to the requirements under NEPA.

The following chronology generally identifies those parts of the EIS and NEPA process which may need attention in order to meet CEQA standards, or which should be highlighted to illustrate their CEQA compliance, and suggests specific actions.

Notice of Intent (NOI):

The NOI performs the same function as CEQA's "Notice of Preparation" (NOP). The NOI should be supplemented with a summary of the probable environmental impacts of the project in order to meet the standards for NOP content under *CEQA Guidelines* Section 15082.

NEPA regulations require the federal agency to diligently pursue public involvement in the NOI. This includes direct notice to State and local responsible and trustee agencies as otherwise required under CEQA. The local agency may provide the federal agency a list of responsible and trustee agencies and their addresses to facilitate this notice.

Scoping:

Scoping allows interested agencies the opportunity to comment on the project's potential effects and help focus the contents of the EIS/EIR. NEPA doesn't establish a specific length of time for the scoping process. This period must be at least 30

days, as provided for the review of an NOP under *CEQA Guidelines* Section 15082.

Notice of Availability (NOA):

This corresponds to the "Notice of Completion" required under the *CEQA Guidelines.* The NOA must be filed with the State Clearinghouse and an appropriate number of copies of the draft EIS/EIR must accompany it for circulation to State agencies. A copy must also be posted in the office of the County Clerk. The draft EIS/EIR must be available for public review for at least 45 days, as provided under Section 21091, and public notice of that fact must be given pursuant to Section 21092. NEPA regulations also require a 45-day review period (40 CFR 1506.10).

Draft EIS/EIR:

This serves as the draft EIR. The local agency should review the draft EIS/EIR to ensure that it meets CEQA standards before it is released for review. This can include examining the specific mitigation measures identified for the project and the EIS/EIR's discussion of the project's growth-inducing impacts, if any. The local agency may attach a cross-reference to the draft EIS/EIR to enable reviewers to locate the pertinent discussions required under CEQA.

Final EIS/EIR:

In order to comply with CEQA, the local agency should highlight the responses to comments, attaching additional pages if necessary to describe them. Further, the local agency should check the FEIS/EIR to ensure that mitigation measures and any growth-inducing impacts relative to the project are specifically identified.

Distribution of the Final EIS:

NEPA requires the federal lead agency to file a second NOA with the EPA and to distribute the final EIS/EIR to interested agencies, groups, and individuals at least 30 days prior to acting on the disposal and reuse plan (40 CFR 1506.10). CEQA does not have a corresponding requirement for circulating a final EIR. However, the CEQA lead agency must send to each commenting agency a proposed response to that agency's comment.

Action:

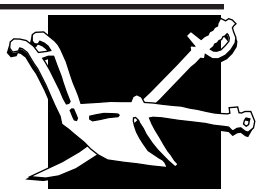
After approval of the disposal and reuse plan by the DoD agency, the local agency should file a Notice of Determination (NOD) for the EIS/EIR with the county clerk and the State Clearinghouse. This initiates CEQA's 30-day statute of limitations for legal challenges to an EIR.

Certification and Findings:

Later, at such time as it uses the EIS/EIR, the local agency must certify the document pursuant to *Guidelines* Section 15090 and make the findings and statement of overriding considerations required under *Guidelines* Sections 15091 and 15093, respectively. Certification is the agency's voucher as to the CEQA adequacy of the EIS and its formal expression that the decisionmaking body has reviewed and considered the information contained in the EIS/EIR prior to approving the project. Pertinent mitigation measures must be adopted by the local agency at that time. A mitigation monitoring or reporting program must also be adopted (Section 21081.6).

An NOD must be filed within 5 days of the agency's action (Section 21152).

4 Boarding a Moving Train: Joining the EIS Process



As discussed above, Federal and California agencies may cooperate to prepare one document for base disposal and reuse plans which will satisfy both NEPA and CEQA requirements. The following section suggests an alternative intervention strategy for local agencies when a joint document is not being prepared and the federal agency is proceeding on its own.

CEQA specifically allows the use of an EIS in place of an EIR when the EIS meets all substantive requirements of CEQA (Section 21083.5 and Guidelines Section 15221). A local agency may take a number of independent actions which will help ensure that the EIS sufficiently complies with the provisions of CEQA and the *CEQA Guidelines* to qualify as an EIR. As in the case of joint preparation, the local agency must involve itself as early in the process as possible.

Typically, in this situation no locally agreed upon reuse plan is yet available. As a result, the local agency cannot expect the EIS to accurately reflect the eventual direction on reuse. In the end, the result should be an EIS which, although limited in its applicability to specific later projects, at least can be considered the equivalent of an EIR.

The primary goal of the local agency should be that the EIS will meet the basic notice and content requirements of CEQA. Tiering and application of the subsequent/supplemental EIRs to later projects will be easier when there is no question that the prior EIS meets all substantive CEQA requirements.

Here are specific suggestions for each stage of the federal EIS process.

Notice of Intent:

Request that the DoD agency submit a copy of the NOI to responsible State and local agencies and to the State Clearinghouse, pursuant to 40 CFR 1506.6 (public involvement). The local agency should provide a list of agencies and their addresses to the federal agency as part of this request. The local agency should also request that the NOI list the possible environmental impacts of the project.

Scoping:

The local agency should offer comments to the DoD agency relative to the potential environmental effects, cumulative effects, growth-inducing impacts, project alternatives, and mitigation measures which would be required to comply with CEQA. The local agency's intention should be to direct the discussions in the EIS in a manner which will fulfill CEQA requirements for content.

Notice of Availability (NOA):

The local agency should request that the DoD agency send the NOA to the State Clearinghouse, as well as any other agencies that were sent the NOI, and provide a comment period that is no shorter than that established by the State Clearinghouse (at least 45 days). The NOI should contain all those elements required by Section 21092. The local agency should also request that the DoD agency send 10 copies of the Draft EIS to the Clearinghouse, or do so itself. In addition, the local agency should request that the DoD agency provide public notice of the NOA pursuant to Section 21092 (as encouraged by 40 CFR 1506.2 and 1506.6), or provide such notice itself. Notice should also be posted in the County Clerk's office for a period of not less than 30 days.

Draft EIS:

Taking a tip from Section 21101, which directs State agencies to include in their comments on a draft EIS "a detailed statement" putting the comments into the context of the mandated contents of an EIR, the local agency's comments should identify that material which is otherwise required of an EIR. Particular attention should be paid to the project description, potential environmental effects, cumulative effects, growth-inducing impacts, project alternatives, and mitigation measures. Further, the local agency's comments may include additional discussion and analyses of these topics. They may also restate the contents of the EIS' discussion of the project in a format more consistent with CEQA.

For example, an EIS typically places equal emphasis on the project and alternatives. CEQA,

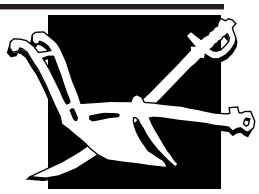
however, emphasizes the project and relates the discussions of significant effects, cumulative effects, and growth inducing impacts directly to that project. A local agency may identify and reference, or even restate, the relevant EIS discussions as they relate to the reuse plan.

If no local base reuse plan was available during the drafting of the EIS, this is the last practical opportunity for the local agency to attempt to have such a plan incorporated into the EIS. If a local reuse plan has been completed by this stage, the local agency should submit a copy of that plan with its comments on the Draft EIS. The local agency may also include an examination of the reuse plan's significant effects, cumulative effects, and growth-inducing impacts.

Distribution of the Final EIS and Federal Action:

If a base reuse plan is completed after the end of the review period for the Draft EIS, but during final distribution of the Final EIS, the local agency should immediately so inform the DoD agency and provide it with a copy of that plan. The local agency may suggest that for purposes of 40 CFR Section 1502.9 the base reuse plan constitutes "significant new circumstances or information relevant to environmental concerns" requiring preparation of a supplement to the Final EIS. The supplement would effectively incorporate the local reuse plan into the EIS.

5 Applying an Existing EIS to Later Local Projects



An EIS can be used as an EIR to the extent that the EIS complies with the provisions of the *CEQA Guidelines (Section* 21083.5, *Guidelines* Section 15221). All too often, however, development opportunities arise which were not contemplated in the local reuse plan or EIS. When evaluating later proposals necessary to base reuse such as local base reuse plans, general plan amendments, specific plans, rezoning, or redevelopment plans, the local agency faces two key questions: Can the EIS suffice to address these later projects? If not, how may the information contained in the EIS be productively reused?

The local agency's first step should be to critically evaluate the adequacy of the EIS relative to the later proposal. This evaluation should pursue two broad lines of inquiry:

(1) ***Content:*** To what extent does the EIS comply with CEQA and, further, is the later project fully examined in the EIS? As discussed previously, the requirements of NEPA and CEQA largely overlap. Recognizing that an EIS will not necessarily look like an EIR and that *CEQA Guidelines* Section 15120 provides that there is no mandatory format for EIRs, disregard superficial differences and focus on the overall contents of the EIS.

Guidelines Section 15221 states that a separate discussion of mitigation measures and growth-inducing impacts will need to be "added, supplemented, or identified before the EIS can be used as an EIR." However, since the NEPA guidelines requires that an EIS contain these points of analysis, addition may not actually be necessary (40 CFR 1508.20). If the analysis must be supplemented, OPR recommends that the local agency prepare a supplemental EIR as provided under Section 15163 of the *CEQA Guidelines.* If the analysis is present, but needs to be identified in order to show that it is present, the lead agency may follow the procedure for addenda provided under Section 15163 of the *Guidelines.*

(2) ***Notice:*** Was public notice and the opportunity for review and comment provided in accordance with CEQA procedures? If yes, then Section 15225 of the *CEQA Guidelines* enables the local agency to use the EIS as the equivalent of an EIR without additional circulation. If no, then the local agency should follow the procedure described under *Guidelines* Section 15153 for use of an EIR from an earlier project. This will include preparing an initial study and circulating the EIS for public review as a draft EIR.

Applying an Adequate EIS to Later Projects

Where the EIS complies with CEQA and adequately discusses the later project, such as a local reuse plan purposely written to match the preferred alternative set out in the EIS, Section 15221(b) of the *CEQA Guidelines* provides that the local agency need not prepare an EIR. The local agency must provide advance public notice pursuant to *Guidelines* Section 15087 that it intends to use the EIS as an EIR and that the EIS meets the requirements of CEQA. OPR recommends providing notice pursuant to Public Resource Code Section 21092. This notice does not open a new comment period.

From that point, the local agency proceeds as though using an EIR. The EIS must be certified *(Guidelines* Section 15090). Unlike NEPA, which requires federal agencies to consider, but not necessarily impose, mitigation measures and alternatives, the local agency must impose the applicable mitigation measures or alternatives identified in the EIS(EIR) if it approves the later project. It must adopt findings under *Guidelines* Section 15091 for each of the significant environmental effects identified in the EIS(EIR) and, if there are any unavoidable significant effects, a statement of overriding consideration pursuant to *Guidelines* Section 15093. A Notice of Determination must be filed with the County Clerk and, if the project will involve State agency approvals, with OPR. The EIS(EIR) must be filed with other agencies as required under *Guidelines* Section 15095.

Using an EIS as the Basis for Additional Environmental Analysis

What if the later project was not fully addressed in the EIS? This may be the case when there was no local reuse plan available to the DoD agency during preparation of the EIS or, more commonly, when specific projects such as a specific plan or rezoning are proposed after completion of the NEPA process.

Later projects must undergo a new environmental review, beginning with an initial study to determine whether the project may have a significant adverse effect on the environment. If there is substantial evidence that such an effect may occur, the Lead Agency must prepare an EIR. If there is no substantial evidence for such an effect a negative declaration (including a mitigated negative declaration) is adopted instead (Section 21080). A mitigated negative declaration is used "when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration is released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment" (Section 21064.5).

Where possible, the initial study should use and cite information in the EIS which is indicative of the presence or absence of a significant effect. Further, the later EIR or negative declaration may reference pertinent sections of the EIS rather than generating the same information a second time *(Guidelines* Section 15150).

Where the later activity was generally described in the EIS, but was not a focus of that document, the later review may be "tiered" upon the EIS. Pursuant to Sections 21093 and 21094, the review of the later project may avoid repetitive discussion of issues and focus on those issues which are "ripe for decision" and specific to the later project. One example of a project suitable for tiering might be adoption of specific zoning for a use described in the closure and reuse plan.

As a rule, tiering is used for "separate but related projects" *(Guidelines* Section 15152). A tiered EIR is limited to discussion of those significant effects which were not examined in the prior EIS or are susceptible to substantial reduction or avoidance by specific revisions or conditions imposed on the project. If a project's environmental review is to be tiered upon the previous EIS, the lead agency must find that the project is consistent with both of the following:

- The program, plan, policy, or ordinance for which the previous EIR (or in this case the EIS) was certified.
- The general plan and zoning of the city or county in which the project would be located (Section 21094(b)).

Recirculating an EIS

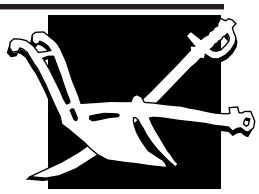
Section 21083.8 provides an optional procedure for those initial base reuse plans where an EIS has already been prepared and filed in accordance with NEPA. It involves circulating the EIS for review and comment as a precursor to using the federal document as a draft EIR.

The lead agency preparing an EIR for the initial reuse plan would proceed in the following manner:

- Issue an NOP pursuant to Section 21080.4 (or an expanded NOP prusuant to Section 21080.6) describing the proposed reuse plan and containing a copy of the EIS. The NOP would be required to state that the lead agency intends to use the accompanying EIS as a draft EIR and to request comments on whether and to what extent the EIS is adequate for that purpose and what specific additional information, if any, is needed.
- Upon the close of the NOP's comment period, continue with the EIR process, utilizing all or part of the EIS, combined with any necessary additional information, as the draft EIR.

Section 21083.8 is repealed by its own provisions on January 1, 2001.

6 SB 1180 and Baseline Conditions



A fundamental question in environmental analysis is what baseline conditions should be used for determining whether a proposed military base reuse plan will result in significant environmental effects. Should the potential impacts of the reuse plan be analyzed relative to the closed base, or in the context of the higher level of activity which existed before its closure or realignment?

SB 1180 of 1995 (Stats. of 1995, Chapter 861) was enacted as an optional means of establishing a baseline context for analysis. It offers a statutory "safe harbor" for agencies which follow its procedures. Although primarily designed for situations where an EIR is being prepared apart from an EIS, it is flexible enough to be used during preparation of a combined EIS/EIR.

Baseline Context

Most, but not all, armed services have opted in preparing their base closure and reuse EIS to relate their closure and reuse plan to the activity level which existed on their base when it was in full operation. Some reuse authorities and local agencies have followed the federal lead and assumed preclosure activity as a baseline. Others have not felt comfortable with that approach and have analyzed the reuse plan as if no activity had previously existed.

SB 1180, codified in Section 21083.8.1, enables the lead agency to identify the specific physical conditions which existed when the federal decision to close or realign the base became final that will form the context for environmental review. For example, the lead agency may decide to ground its environmental analysis on preexisting noise and traffic levels. The EIR would analyze that increment of impact, if any, which exceeds the baseline and, where that increment may result in a significant effect, address mitigation measures and alternatives accordingly. Where the reuse plan would not exceed the baseline level of activity, the lead agency could presume that no significant impact would occur. Once an EIR had been certified for a base reuse plan under this provision, all later activities consistent with or to implement that plan would avoid the need for further EIRs or negative declarations unless subject to *Guidelines* Sections 15162-15164.

There are limits to the conditions which may be included in the baseline determination. No hazardous material or waste can be included in a baseline, nor can water quality issues. In addition, although adoption of a baseline limits the review necessary for CEQA purposes, it does not forgive the plan's future compliance with federal, State, and local regulations and ordinances which might otherwise apply. For example, adopting a CEQA baseline for preexisting traffic levels at the military base would avoid the need to include mitigation measures or alternatives to address reuse plan traffic levels projected at that level or below, but would not change the requirements of the county's congestion management program or local traffic impact fees.

Reuse Plan

SB 1180 applies only to reuse plans which match the definition set out in Section 21083.8.1(a). For purposes of the statute, "reuse plan" means the initial plan for reuse of a military base adopted by a local government or redevelopment agency. The reuse plan may take the form of a general plan, general plan amendment, specific plan, redevelopment plan, or other planning document such as a community plan. The military base or reservation in question must be either closed or realigned, or slated for closure or realignment by the federal government.

A reuse plan under Section 21083.8.1 must include a statement of development policies and a diagram or diagrams illustrating that policy. The plan must designate the proposed general distribution and location, as well as the development intensity, of housing, business, industry, open space, recreation, natural resources, public buildings and grounds, roads and other transportation facilities, infrastructure, and those other public and private uses of land which may be of importance to the local government.

Section 21151.1, enacted in 1995, requires that an EIR be prepared for every initial base reuse plan. The local lead agency has the usual options in preparing that document. For instance, a joint EIS/EIR would fulfill the requirement. Where an EIR alone is being prepared, it may incorporate pertinent portions of a previously prepared EIS. Section 21083.8.1 may be used to narrow the range of potential impacts of the proposed initial plan which must be analyzed in the required EIR.

Procedure

SB 1180 has unique requirements intended to ensure that the public, as well as responsible and trustee agencies are given ample opportunity to consider and discuss any proposed baselines. These create new responsibilities for the lead agency.

Prior to preparing its EIR, the lead agency must hold a noticed public hearing on the proposed baseline(s) at which to discuss the federal EIS prepared or being prepared for the base closure or realignment. This must include a discussion of the significant effects identified in the EIS, mitigation measures, feasible alternatives, and the mitigative effects of federal, State, and local laws applicable to planned future nonmilitary activities. Hearing notice must be provided per Section 21092. If the hearing cannot be completed at once, it may be continued to a time certain. Prior to the close of the hearing, the lead agency may specify, at its discretion:

- The baseline conditions to be used in preparation of the EIR. This should identify those particular levels of activity which existed prior to the federal base closure or realignment ROD that are to form the context within which the reuse plan's activities are analyzed. Activities might include traffic levels, housing, water use, or others.
- Any particular physical conditions to be addressed in greater detail in the EIR than in the EIS. This could include conditions which would be significant under CEQA that were not considered significant in the EIS, or adding detail to the mitigation measures discussed in the EIS.

Prior to holding the above hearing, the lead agency must consult with pertinent responsible and trustee agencies regarding the proposed baseline(s) and provide those agencies 30 days in which to respond with their concerns. This consultation requirement neatly coincides with the NOP consultation period otherwise provided for under CEQA and can be combined with the NOP to avoid duplication of effort. Where the lead agency intends to use a previously prepared EIS as its EIR through the alternative procedure established under Section 21083.8 (see Section 5 of this advisory), it must also include a copy of the EIS with the NOP.

Section 21083.8.1 does not specify the contents of the notice sent to responsible and trustee agencies for review and comment. OPR suggests that it identify the particular activity, its specific preexisting level, and outline any related significant effects, mitigation measures, and alternatives discussed in the EIS, and the expected mitigative effects of other regulations. Unless sent with an NOP, the notice should specify the location of the military base and the location of the activity (where applicable), the name and address of the lead agency, a contact person, and the date by which comments must be received. The notice should also provide the date, time, and place of the public hearing on the baseline, if known.

At the close of the public hearing, the lead agency must specify the following in writing:

- How it will integrate the selected baseline(s) into the CEQA analysis and the reuse planning process. Areas of discussion include community environmental standards, the applicable general plan, specific plan, and redevelopment plan, and any applicable provisions of adopted congestion management plans, habitat conservation or natural communities conservation plans, integrated waste management plans, and county hazardous waste management plans. One purpose of this requirement is to relate the baseline(s) to community environmental standards. The other is to describe the planning and regulatory context within which the baseline(s) exist.
- The economic and social reasons which support adoption of the baseline(s). These may include such things as new job creation, opportunities for the employment of skilled workers, availability of low- and moderate-income housing, and economic continuity. Although this determination resembles the finding of overriding consideration required under *Guidelines* Section 15093, it is a separate requirement which must be met before the draft EIR is circulated for review.

SB 1180 requires that the "no project" alternative analyzed in the EIR discuss the existing condi-

tions on the base at time the EIR is being prepared, as well as what could be reasonably expected to occur in the foreseeable future if the reuse plan were not approved. The reasonable expectations must be based on current plans and be consistent with available infrastructure and services. This is identical to the requirement established in *Guidelines* Section 15126 for any discussion of a no project alternative.

After reaching this point, a lead agency which has chosen to employ Section 21083.8.1 would proceed as usual with the standard EIR process. It would release a draft EIR for review, respond to comments in the final EIR, certify the final EIR, adopt a mitigation monitoring or reporting program, and make the required findings under *Guidelines* sections 15091 and 15093. Filing a notice of determination would fulfill the agency's responsibilities.

The provisions of SB 1180 will only be available for a limited time. If a lead agency chooses to employ Section 21083.8.1, it must release an NOP for consultation within one year from either the date of approval of the federal ROD completing the base closure or realignment, or January 1, 1997, whichever is later.

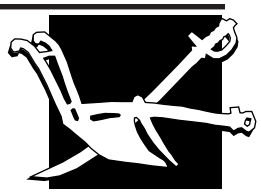
Advantages

The primary attraction of using Section 21083.8.1 is that it offers the lead agency a safe harbor within which to use preexisting physical conditions as the context for determining whether the reuse plan may have a significant effect under CEQA.

Secondarily, the procedure ensures that interested public agencies and the public are given an opportunity to comment on the proposed baseline for analysis. And, that the lead agency makes a full disclosure of its approach to using the baseline.

Where a joint EIS/EIR is being prepared, SB 1180 offers an opportunity to publicly disclose and discuss the baseline assumptions applied in that joint document.

Bibliography



Bass, Ronald E. and Albert I. Herson, Mastering *NEPA: A Step-by-Step Approach,* 1993, Solano Press, Point Arena, California

Bass, Ronald E. and Albert I. Herson, *Successful CEQA Compliance: A Step-by-Step Approach,* 1993, Solano Press, Point Arena, California

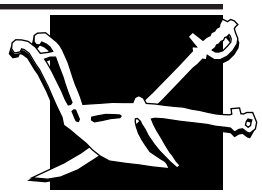
California Environmental Quality Act Statute and Guidelines, 1992, Governor's Office of Planning and Research, Sacramento, California

Kosta, Stephen L. and Michael H. Zischke, Practice Under *the California Environmental Quality Act,* 1993, Continuing Education of the Bar, Berkeley, California

Remy, Michael H., Tina Thomas, et al., *Guide to the California Environmental Quality Act,* 1993, Solano Press, Point Arena, California

Appendix 1

Excerpts from California and Federal Statutes



Excerpts from the CALIFORNIA PUBLIC RESOURCES CODE (CEQA statute):

21083.5. (a) The guidelines prepared and adopted pursuant to Section 21083 shall provide that, when an environmental impact statement has been, or will be, prepared for the same project pursuant to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Section 4321 et seq.) and implementing regulations, or an environmental impact report has been, or will be, prepared for the same project pursuant to the requirements of the Tahoe Regional Planning Compact (Section 66801 of the Government Code) and implementing regulations, all or any part of that statement or report may be submitted in lieu of all or any part of an environmental impact report required by this division, if that statement or report, or the part which is used, complies with the requirements of this division and the guidelines adopted pursuant thereto.

(b) Notwithstanding subdivision (a), compliance with this division may be achieved for the adoption in a city or county general plan without any additions or changes of all or any part of the regional plan prepared pursuant to the Tahoe Regional Planning Compact and implementing regulations by reviewing environmental documents prepared pursuant to this division of any significant effect on the environment not addressed in the environmental documents, and proceeding in accordance with Section 21081. This subdivision does not exempt a city or county from complying with the public review and notice requirements of this division.

21083.6. In the event that a project requires both an environmental impact report prepared pursuant to the requirements of this division and an environmental impact statement prepared pursuant to the requirements of the National Environmental Policy Act of 1969, an applicant may request and the lead agency may waive the time limits established pursuant to Section 21100.2 or 21151.5 if it finds that additional time is required to prepare the combined environmental impact report environmental impact statement and that the time required to prepare such a combined document would be shorter than that required to prepare each document separately.

21083.7. In the event that a project requires both an environmental impact report prepared pursuant to the requirements of this division and an environmental impact statement prepared pursuant to the requirements of the National Environmental Policy Act of 1969, the lead agency shall, whenever possible, use the environmental impact statement as such environmental impact report as provided in Section 21083.5. In order to implement the provisions of this section, each lead agency to which this section is applicable shall consult, as soon as possible, with the agency required to prepare such environmental impact statement.

21101. In regard to any proposed federal project in this state which may have a significant effect on the environment and on which the state officially comments, the state officials responsible for such comments shall include in their report a detailed statement setting forth the matters specified in Section 21100 prior to transmitting the comments of the state to the federal government. No report shall be transmitted to the federal government unless it includes such a detailed statement as to the matters specified in Section 21100.

Excerpts from the *CEQA GUIDELINES*

Article 14. Projects Which are Also Subject to the National Environmental Policy Act (NEPA)

15220. This article applies to projects that are subject to both CEQA and NEPA. NEPA applies to projects which are carried out, financed, or approved in whole or in part by federal agencies. Accordingly, this article applies to projects which involve one or more state or local agencies and one or more federal agencies.

15221. (a) When a project will require compliance with both CEQA and NEPA, state or local agencies should use the EIS or finding of no significant impact rather than preparing an EIR or negative declaration if the following two conditions occur:

(1) An EIS or finding of no significant impact will be prepared before an EIR or negative declaration would otherwise be completed for the project; and

(2) The EIS or finding of no significant impact complies with the provisions of these guidelines.

(b) Because NEPA does not require separate discussion of mitigation measures or growth inducing impacts, these points of analysis will need to be added, supplemented, or identified before the EIS can be used as an EIR.

15222. If a lead agency finds that an EIS or finding of no significant impact would not be prepared by the federal

agency by the time when a lead agency will need to consider an EIR or negative declaration, the lead agency should try to prepare a combined EIR-EIS or negative declaration-finding of no significant impact. To avoid the need for the federal agency to prepare a separate document for the same project, the lead agency must involve the federal agency in preparation of the joint document. This involvement is necessary because federal law generally prohibits a federal agency from using an EIR prepared by a state agency unless the federal agency was involved in the preparation of the document.

15223. When it plans to use an EIS or finding of no significant impact or to prepare such a document jointly with a federal agency, the lead agency shall consult as soon as possible with the federal agency.

15224. Where a project will be subject to both CEQA and the National Environmental Policy Act, the one year time limit and the 105 day time limit may be waived pursuant to Section 15110.

15225. Where the federal agency circulated the EIS or finding of no significant impact for public review as broadly as state or local law may require and gave notice meeting the standards in Section 15072(a) or 15087(a), the lead agency under CEQA may use the federal documents in place of an EIR or negative declaration without recirculating the federal document for public review. One review and comment period is enough. Prior to using the federal document in this situation, the lead agency shall give notice that it will use the federal document in the place of an EIR or negative declaration and that it believes that the federal document meets the requirements of CEQA. The notice shall be given in the same manner as a notice of the public availability of a draft EIR under Section 15087.

15226. State and local agencies should cooperate with federal agencies to the fullest extent possible to reduce duplication between the California Environmental Quality Act and the National Environmental Policy Act. Such cooperation should, to the fullest extent possible, include:

(a) Joint planning processes,
(b) Joint environmental research and studies,
(c) Joint public hearings,
(d) Joint environmental documents.

15227. When a state agency officially comments on a proposed federal project which may have a significant effect on the environment, the comments shall include or reference a discussion of the material specified in Section 15126. An EIS on the federal project may be referenced to meet the requirements of this section.

15228. Where a federal agency will not cooperate in the preparation of a joint document and will require separate NEPA compliance for the project at a later time, the state or local agency should persist in efforts to cooperate with the federal agency. Because NEPA expressly allows federal agencies to use environmental documents prepared by an agency of statewide jurisdiction, a local agency should try to involve a state agency in helping prepare an EIR or negative declaration for the project. In this way there will be a greater chance that the federal agency may later use the CEQA document and not require the applicant to pay for preparation of a second document to meet NEPA requirements at a later time.

Excerpts from the COUNCIL ON ENVIRONMENTAL QUALITY NEPA REGULATIONS (Code of Federal Regulations)

40 CFR 1502.9. Except for legislation as provided in Section 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in Section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a

draft and final statement unless alternative procedures are approved by the Council.

40 CFR 1506.2. (a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State and local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

40 CFR 1506.6. Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice be regularly provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency.

Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council [on Environmental Quality].

40 CFR 1506.10. (a) The Environmental Protection Agency shall publish a notice in the Federal Register each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under Section 1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above under in paragraph (a) of this section for a draft environmental impact statement.

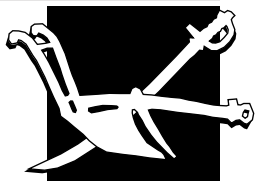
(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement.

An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies may have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision shall be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall not allow less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend the prescribed periods, but only after consultation with the lead agency. Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

Appendix 2
Sample MOU for Joint EIS/EIR



Memorandum of Understanding

Agreement Regarding the Preparation of a Joint Environmental Document for the [*Project*]

This agreement is entered into this day of _____, 199__, by and between/among the following parties:

[*Agency A*], hereinafter referred to as _____;

[*Agency B*], hereinafter referred to as _____;

[*Agency C*], hereinafter referred to as _____; and

[*Project Sponsor/Applicant*], hereinafter referred to as _____; and

California Trade and Commerce Agency, Office of Permit Assistance (OPA).

WHEREAS, has proposed to [*Brief Project Description*], and has applied for the necessary approvals from Federal, State, [*and/or*] local agencies; and

WHEREAS, the [*Project Title*] Project, hereinafter referred to as "Project," may have a "significant effect on the environment" (as defined by the California Environmental Quality Act, hereinafter referred to as CEQA), including but not limited to impacts on air and water quality, fish, and wildlife, which must be considered by [*State and/or Local Agencies*] when reviewing and acting on projects pursuant to CEQA and other applicable State laws; and

WHEREAS, the environmental impact from the Project must also be considered by the [*Federal Agencies*] when reviewing and acting on projects pursuant to the National Environmental Policy Act, hereinafter referred to as NEPA, and other applicable federal laws; and

WHEREAS, Office of Permit Assistance is required by California Government Code Section 65923 to ensure compliance with California Government Code Sections 65920-65957 by State agencies; and

WHEREAS, the parties now desire to prepare an environmental document on the proposed Project that includes all relevant information and analysis before acting on the [*Applicant's*] applications; and

WHEREAS, it is the mutual beneficial interest of all parties to share in the task of preparation of an environmental study on the Project because the reduction of duplication in staff efforts, sharing of staff expertise and information already existing, and promotion of intergovernmental coordination at the State and federal levels will serve the public interest by producing a more efficient environmental review process.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, it is agreed as follows:

1. THE STUDY

(A) Pursuant to this agreement, a joint environmental document, hereinafter referred to as the Study, shall be prepared on the Project, in accordance with NEPA, CEQA, _____. The Study shall address the impacts on the environment of the Project and alternatives thereto, including but not limited to air and water quality and land use impacts of the proposed project and alternative proposals.

(B) In the event of disputes as to scientific issues relating to the Study, the Study shall contain conflicting viewpoints.

(C) In the event of disputes concerning mitigation measures the study shall identify the full range of measures under consideration.

2. AGENCY PROJECT REPRESENTATIVES AND THEIR DUTIES

(A) In the preparation of the Study, each decision-making agency shall be represented by its agency project representative or designee. Agency project representatives collectively referred to hereinafter as the Steering Committee:

Name

Agency

Address

Phone

[*for each agency named above*]

(B) The successful preparation of the Study requires complete and full communication between all parties involved. It is the duty of the agency project representatives to ensure close consultation throughout the document preparation and review process. The agency project representatives shall keep each other advised of the developments affecting the preparation of the Draft Study. Meetings of the Steering Committee shall be held as needed to ensure close consultation. A representative shall notify the other representatives in writing of a change in his or her address or telephone number.

(C) To the maximum extent practicable under existing laws and regulations, all parties agree to share all relevant information.

3. PROJECT COORDINATOR AND DUTIES

OPA hereby appoints the following project coordinator:

[*Project Coordinator*] _____

It shall be the responsibility of OPA to assist all participants in maintaining full communication and coordination throughout the preparation of the Study.

4. JOINT RESPONSIBILITIES OF THE [*All Agencies Involved*]

(A) The Steering Committee shall determine:
- (a) The scope and content of the Study for the Project to ensure that the requirements of the various federal and state statutes, mentioned in 1 above, are met and that the statutory findings required of the [*agencies involved*] for their respective decisions on the Project can be made;
- (b) The consultant who will prepare the Study;
- (c) Whether the work performed by the consultant is satisfactory and, if not, how best to correct the deficiencies in the work; and
- (d) The division of responsibilities among co-lead agencies.

(B) The agencies shall not be required to participate in the cost of the portion of the Study to be accomplished by the contract.

5. RESPONSIBILITIES OF STATE OR LOCAL LEAD AGENCY

6. RESPONSIBILITIES OF FEDERAL LEAD AGENCY

(The following responsibilities must be delegated among the two lead agencies:)

(A) Except as listed in 4 above, [*selected agency*] shall be solely responsible for entering into a contract with the selected consultant and administering the preparation of the Study for the Project.

(B) Between the receipt of the Draft Study and [*selected agency*] certification of the final Study, the [*selected agency*] shall prepare copies of all comments and proposed responses to the comments for review by the Steering Committee.

(C) In order to ensure that the Draft Study adequately considers their concerns, a preliminary Draft of the Study will be provided to the Steering Committee prior to official completion. (See timetable 7, below)

(D) In order to obtain comments from all public agencies and from the general public on the draft Study, [*selected agency*] shall conduct the first noticed public hearing on the draft Study (see timetable 7 below) with the joint participation of the [*Steering Committee*].

(E) The Final Study, including all comments received and the responses to the comments, including all comments submitted by the [*other agencies*] shall be prepared by the consultant under the [*selected agency's*] direction.

7. TIME LIMITS AND TIMETABLE

(A) The [*State and/or local agencies*] are required to approve or disapprove the Project based on the EIR, in conformance with the time schedule and procedures set out in California Government Code Sections 65920-65957.

(B) The [*federal agencies*] hereby agree to cooperate with [*State and/or local agencies*] in conformance with said time schedule and procedures. The agencies involved have agreed upon the following timetable:

Week No. :	*Following application filed with County/State – Federal Agency*
1	Application found to be complete.
2	Notice of Preparation/Intention sent to interested parties.
4	Scoping Meeting.
8	Request for Proposals for Study issued.
10	Pre-bid conference.
14	Proposals due to delegated co-lead agency.
16	Contractor selected.
18	Contract awarded.
27	Preliminary Draft Study reviewed by Steering Committee.
30	Draft Study received by [*co-lead agencies*].
36	First public hearing on Draft Study.
38	Continued public hearing on Draft Study.
43	Final Study received by agency project representatives.
48	Certification/Adoption of Final Study by co-lead agencies.
52	Decision on project.

The time limits established herein are maximum time limits for the agencies involved to reach a decision on the project. It is understood that best efforts will be made by all parties to comply with this timetable.

8. ASSESSMENT/CERTIFICATION OF COMPLETENESS OF FINAL STUDY

The agencies involved shall independently assess and certify the completeness of the final Study within the time constraints of California Government Code Sections 65920-65957.

9. CEQA CERTIFICATION BY STATE OR LOCAL LEAD AGENCY

Upon independent certification of the final study, notification shall be made by [*State and/or local lead agency*] , pursuant to CEQA. Thereafter, [*other affected agencies*] may consider and act on the Project, making the findings required by law. Unless an extension is otherwise previously agreed upon by all parties, this agreement shall expire on date of above notification.

10. NEPA CERTIFICATION AND DECISION BY FEDERAL LEAD AGENCY

The [*federal lead agency*] shall independently certify the final study and provide notice of the decision pursuant to applicable federal laws and regulations.

11. AGREEMENT COORDINATED WITH NEPA AND CEQA

Each agency shall be free to fulfill its statutory responsibilities, including permit issuance, in accordance with CEQA and NEPA requirements or other applicable statutes.

12. GENERAL AGREEMENTS

(A) The agencies further agree to take whatever further steps they deem necessary, including further agreements or amendments to this Agreement, in order to fulfill the purpose of this Agreement.

(B) Each provision of this Memorandum of Understanding is subject to the laws of the United States and the delegated authority in each instance.

(C) The agencies may terminate their participation in this agreement upon thirty days written notice served upon the other parties. The party electing to terminate the agreement shall state in writing its reason for desiring the termination and provide such to the other parties. During the ensuing thirty day period all parties shall actively attempt to resolve any disagreements so that the termination of this agreement may be avoided.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed on the respective dates set forth opposite their signatures.

[*SIGNATURE, DATES*]